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Report on the *Foreign Money Claims Act*: Regulations

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LAW REFORM COMMISSION OF BRITISH COLUMBIA

FOREIGN MONEY CLAIMS ACT: REGULATIONS

(MINOR REPORT)

LRC 121

August, 1991

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TO THE HONOURABLE RUSSELL G. FRASER
ATTORNEY GENERAL OF THE PROVINCE OF BRITISH COLUMBIA:

Dear Mr. Attorney:

Re: *Foreign Money Claims Act:* Regulations
(Minor Report, LRC 121)

The *Foreign Money Claims Act* was enacted in 1990 but is not yet in force. The Act contemplates the existence of regulations which will harmonize its operation with provincial legislation concerning interest and the machinery for the enforcement of judgments. The creation of regulations is a necessary step before the Act is brought into force. This Report sets out recommendations as to the approach which should be taken in framing the regulations.

Yours sincerely,

A Close

Arthur L. Close, Q.C.
Chairman

August 26, 1991

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FOREIGN MONEY CLAIMS ACT: REGULATIONS

A. Introduction

At the 1990 Session of the British Columbia Legislature, the *Foreign Money Claims Act*[1] was enacted. This legislation implemented the recommendations made by the Law Reform Commission of British Columbia in its 1983 *Report on Foreign Money Liabilities*.[2] That Report thoroughly canvassed the need for legislation governing currency conversion. In particular, the Report concluded that it should be possible to enter a judgment in which a person's claim is measured in terms of a foreign currency until it is satisfied. Conversion to Canadian currency should occur only at the time of payment. This policy is implemented in section 1 of the *Foreign Money Claims Act*:[3]

> 1. (1) Where, before making an order for the payment of money arising out of a claim or loss, the court considers that the person in whose favour the order will be made will be most truly and exactly compensated if all or part of the money payable under the order is measured in a currency other than the currency of Canada, the court shall order that the money payable under the order will be that amount of Canadian currency that is necessary to purchase the equivalent amount of the other currency at a chartered bank located in British Columbia at the close of business on the conversion date.
>
> (2) The conversion date is the last day, before the day on which a payment under the order is made by the judgment debtor to the judgment creditor, that the bank referred to in subsection (1) quotes a Canadian Dollar equivalent to the other currency.

Legislation has also been enacted in Ontario which embodies a similar principle.[4]

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1. S.B.C. 1990, c. 18. The Act is set out in full as Appendix A.
2. LRC 65. The drafting of the *Foreign Money Claims Act* is drawn from the *Uniform Foreign Money Claims Act* promulgated by the Uniform Law Conference of Canada in 1989. The Uniform Act is also based on our 1983 Report.
3. At first blush, the drafting of section 1 appears somewhat convoluted. It is framed in this way in order to minimize the possibility of any conflict with section 12 of the *Currency Act* (CAN), R.S.C. 1985, c. C-52:

   > All public accounts throughout Canada shall be kept in the currency of Canada; and any statement as to money or money value in any indictment or legal proceedings shall be stated in the currency of Canada.

4. *Court of Justice Act*, S.O. 1984, c. 11, s. 131.

B. Interest on Foreign Money Claims

1. Selecting An Appropriate Rate Of Interest

An important feature of the *Foreign Money Claims Act* is the way it deals with interest. The relevant provisions are:

> **2.** (1) Interest payable under the *Court Order Interest Act* shall be paid at a rate determined
>
> (a) under the regulations made under section 3(a), or
>
> (b) in the manner provided for in subsection (2).
>
> (2) Where
>
> (a) due to a change in circumstances, the court considers it is not possible to determine a rate of interest under the regulations,
>
> (b) the court considers it would be unjust to any of the parties that the rate so determined be utilized, or
>
> (c) no regulation has been made under section 3(a) with respect to the other currency,
>
> the court may fix a rate that is payable, having regard to rates that are being paid on the other currency in a country where that currency circulates as legal tender.
>
> **3.** The Lieutenant Governor in Council may make regulations that are considered necessary or advisable respecting
>
> (a) the manner of determining interest rates that are payable on particular currencies, for purposes of section 2(1),...

Interest rates do not exist in isolation from particular currencies. It is important that prejudgment interest payable on a claim which is measured in a foreign currency should be fixed at a rate which is appropriate to that currency, rather than a rate payable for local currency.

The appropriate interest rate is one which is paid on that currency in its "country of origin." Thus a claim which is properly measured in Swiss Francs should attract prejudgment interest at rates payable in Switzerland during the relevant period.[5] To approach the awarding of prejudgment interest on any other basis is to risk seriously distorting the principle enshrined in sec-

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5. *See Miliangos* v. *George Frank (Textiles) Ltd. (No. 2)*, (1976) 3 W.L.R. 477.

tion 1 of the *Foreign Money Claims Act* that the claimant should be "truly and exactly compensated" so far as that is possible.[6]

2. The Court Order Interest Act

The awarding of prejudgment interest is regulated by the *Court Order Interest Act*.[7] That Act leaves the question of interest rates at large with the courts having, notionally at least, a virtually unfettered discretion with respect to the rate at which the judgment will attract prejudgment interest.[8] A practice has evolved, however, that in most cases interest will be awarded at the "registrar's rate." This rate is the one used by the Court Registrar in awarding prejudgment interest on default judgments. The registrar's rate is linked to the rate of interest paid on funds in court which in turn is linked to the chartered bank rate on prime business loans, that is loans made by chartered banks to their most creditworthy customers.

If the *Foreign Money Claims Act* were silent on the question of interest, the way in which the courts would award prejudgment interest under the *Court Order Interest Act* is not wholly predictable. While, in theory, the discretion the courts have with respect to interest rates would allow them to select a rate appropriate to the currency in issue, it cannot be safely assumed that all judges would be attuned to this economic nuance. Even where the courts would be prepared to exercise their jurisdiction under the *Court Order Interest Act* to award prejudgment interest in respect of a foreign currency claim at an appropriate rate, there remains the evidentiary burden of establishing what that rate should be. This could result in, across a number of cases, the introduction of repetitive evidence on what is, essentially, a question of fact.

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6. For example, the currency in which a particular claim is properly measured may undergo a significant decline in purchasing power between the time the claim arises and the time it is satisfied. This phenomenon is generally characterized as "inflation." Periods of inflation, however, usually coincide with periods of relatively high interest rates so the selection of the appropriate interest rate could go some distance toward making the claimant whole. On the other hand, to measure a claim in terms of a currency which has undergone serious inflation and then to award prejudgment interest at a rate appropriate to a currency which has not suffered inflation would be to seriously under-compensate the claimant.

7. R.S.B.C. 1979, c. 76. *See generally* Law Reform Commission of British Columbia *Report on the Court Order Interest Act* (LRC 90, 1987).

8. The only limitation imposed by the Act is that interest cannot be awarded at a rate lower than 5%.

3. Regulations

The *Foreign Money Claims Act* addresses these concerns by providing the courts with explicit guidance as to the appropriate interest rate. The scheme of the Act is to provide, by regulation, the manner of determining interest rates payable on particular currencies. Where no regulation has been made with respect to a particular currency, or where it is impossible or would be unjust to establish an interest rate in accordance with the regulation, then the court is empowered to fix a rate "having regard to rates that are being paid...in a country where that currency circulates as legal tender" (section 2(2)).

C. Interest Regulations

1. Introduction

A legal procedure which requires the introduction of repetitive evidence on economic issues is undesirable for a number of reasons. It wastes the court's time and is a source of expense, inconvenience and delay to the parties. Second, it carries the danger of inconsistent findings of fact by judges, on essentially the same issue of fact, because of differences in the evidence led. This brings the administration of justice into disrepute.

These concerns justify the fixing of rates of court order interest on foreign money claims, by regulation. To date, no regulations have been promulgated under the *Foreign Money Claims Act* and the purpose of this Report is to provide guidance and assistance in developing appropriate regulations.

2. Criteria

It seems obvious that any attempt to specify actual interest rates in a regulation would be virtually unworkable owing to the difficulties of keeping such a regulation up-to-date. It is preferable that a regulation incorporate by reference the interest rates published or established by some other source. That source must have certain qualities. It must be *relevant, authoritative, accessible,* and *timely.*

The source should be *relevant* in two senses. First it should provide interest rates for the currencies of Canada's major trading partners.[9] It is these currencies which are most likely to give rise to orders under section 1 of the *Foreign Money Claims Act*. Second, since court order interest on local judgments is payable at an interest rate which is linked to the chartered bank prime rate, the interest rates established by the source should have a similar character.[10]

The source of interest rates should be *authoritative* in the sense that it is promulgated by a body which enjoys a reputation for accuracy and integrity in relation to financial reporting.

To be *accessible* the source should be available in at least one major British Columbia library and, through its reference services, available anywhere in the province. It should not be necessary for a litigant to consult any sources or authorities outside the provincial boundaries.

The information as to interest rates provided by the source must also be as *timely* as possible. A table of published interest rates for country "X" may not be helpful if the most recent interest rate cited is two years old. While up-to-the-minute information may be difficult to achieve, timeliness is a valid goal.

3. Sources Of Financial Information

Bearing in mind the considerations outlined above, a number of different sources were examined with a view to assessing their suitability as the basis for an interest regulation under the *Foreign Money Claims Act*.

(a) International Monetary Fund Statistics

One published indicator of interest rates which clearly stood out is the *International Financial Statistics* published monthly by the International Monetary Fund. The *International Financial Statistics* contain a table of lending rates (Table 60p) which sets out the lending rates for a number of countries. A copy of Table 60p from the June 1991 issue of *International Financial Statistics* is set out on the following page.

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9. *See* Appendix B.
10. A table of interest rates paid in respect of funds held on deposit by financial institutions in various countries is not relevant since those rates tend to be much lower than lenders' prime rates.

International Monetary Fund

International Financial Statistics

Table 60p

June 1991

Industrial Countries	1983	1984	1985	1986	1987	1988	1990 1 Q	1990 2 Q	1990 3 Q	1990 4 Q	1991 1 Q	1990 Nov.	1990 Dec.	1991 Jan.	1991 Feb.	1991 Mar.	1991 Apr.
U.S.	9.09	8.38	6.81	6.32	6.66	6.97	8.04	8.00	8.00	8.00	6.19	8.00	8.00	6.52	6.04	6.00	6.00
Canada	10.19	10.52	9.52	10.03	8.83	10.08	14.00	14.71	14.25	13.25	11.50	13.25	12.75	12.25	11.25	11.25	—
Australia	15.96	19.96	19.83	18.52	21.08	—	23.08	21.50	19.50	—	—	—	—	—	—	—	—
Japan	6.60	6.02	5.21	5.03	5.29	6.04	6.21	6.15	7.52	7.53	—	7.40	7.15	7.40	7.40	—	—
N. Zealand	—	—	20.84	16.96	14.71	14.36	14.17	14.24	14.40	14.53	—	—	14.53	—	—	—	—
Belgium	12.54	10.44	9.33	8.92	11.08	13.00	13.58	13.25	12.75	12.92	13.00	12.75	13.25	13.25	13.25	12.75	—
Denmark	14.60	12.98	13.02	12.19	13.44	—	—	—	—	—	—	—	—	—	—	—	—
Finland	10.41	9.68	8.91	9.72	10.31	11.62	11.85	11.46	11.38	11.61	—	11.79	11.96	11.97	—	—	—
France	12.72	10.28	9.02	7.65	9.01	—	17.25	16.75	—	—	—	—	—	—	—	—	—
Germany	9.53	8.75	6.86	6.33	6.94	11.58	11.28	11.58	11.64	11.87	12.00	11.91	11.97	11.85	12.10	12.22	—
Greece	20.10	20.10	21.82	22.89	23.26	21.62	25.33	25.00	28.85	29.48	—	29.10	29.10	29.10	29.10	—	—
Ireland	12.66	12.23	11.15	8.29	9.42	11.29	12.00	11.67	11.00	10.50	11.25	10.50	10.50	11.25	11.25	11.25	—
Italy	15.86	15.93	12.68	12.57	10.21	14.09	14.63	14.39	13.83	13.68	—	13.61	13.71	14.00	14.29	—	—
Netherlands	9.25	8.63	8.10	7.27	10.75	11.75	12.00	11.67	11.50	11.63	12.62	11.75	12.25	12.25	12.75	12.25	12.75
Norway	13.46	14.37	16.31	16.40	14.39	14.18	14.38	14.38	14.23	14.16	—	—	14.16	—	—	—	—
Portugal	21.29	19.63	18.92	17.53	19.50	21.71	20.79	21.53	21.97	22.64	22.19	22.69	22.69	22.69	23.00	23.52	—
Spain	13.52	12.19	16.36	12.43	15.84	16.01	15.36	15.19	15.94	15.94	15.69	15.87	16.16	16.04	15.82	15.23	—
Sweden	10.12	14.18	12.99	13.32	14.36	17.10	16.93	15.47	15.62	17.10	—	—	17.10	—	—	—	—
Switzerland	5.43	5.46	5.24	5.07	5.95	7.62	8.97	7.31	7.55	7.86	7.95	7.85	7.82	7.91	7.99	7.88	7.67
U.K.	12.29	10.83	9.63	10.29	10.52	14.75	15.00	15.00	15.00	14.65	—	14.00	14.00	—	13.00	12.50	12.00
Developing Countries Africa																	
Algeria	9.63	—	13.56	—	—	—	—	—	—	—	—	—	—	—	—	—	—
South Africa	21.58	16.33	12.50	15.50	19.83	21.00	21.00	21.00	21.00	21.00	—	21.00	21.00	21.00	21.00	—	—
Asia																	
Indonesia	—	21.49	21.67	22.10	21.73	—	20.54	19.12	20.46	—	—	—	—	—	—	—	—
Korea	10.00	10.00	10.00	10.13	11.71	10.50	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	—
Malaysia	11.54	10.66	8.18	7.25	7.50	—	7.00	7.00	7.17	—	—	—	—	—	—	—	—
Thailand	19.00	17.00	15.00	15.00	15.06	—	—	—	—	—	—	—	—	—	—	—	—
Europe																	
Turkey	53.50	57.62	50.00	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Yugoslavia	7.15	62.0	111.3	450.2	4,250.0	—	49.3	—	—	—	—	—	—	—	—	—	—
Middle East																	
Kuwait	6.00	6.00	6.00	6.00	6.00	—	6.00	6.00	—	—	—	—	—	—	—	—	—
Western Hemisphere																	
Colombia	—	—	—	28.33	26.21	—	28.63	29.67	—	—	—	—	—	—	—	19.00	—
Venezuela	9.33	9.49	9.48	9.50	22.57	28.23	32.26	26.50	21.52	25.53	25.61	25.52	23.91	24.05	25.49	21.32	—

It is useful to analyse this table in terms of the criteria just discussed.

(i) Relevant

Table 60p pertains to lending rates. Those used in the table are closely analogous to the Canadian chartered bank rate on prime business loans to which local rates of court order interest are linked. Table 60p also covers most of Canada's major trading partners.[11]

(ii) Authoritative

The International Monetary Fund is generally regarded as a credible and authoritative source of financial information. As a check on the accuracy of Table 60p we compared figures for both the United States and Canada with those derived from other sources. They were in substantial agreement.

(iii) Accessible

We know of two sources which subscribe to the *International Financial Statistics:* the main library at the University of British Columbia, and the Vancouver Public Library. Arrangements can be made with the Vancouver Public Library to have this information faxed anywhere in the province.

(iv) Timely

It is evident that the timeliness of the interest rates set out in Table 60p vary significantly from country to country. Interest rates for most (but not quite all) of the industrial countries are reasonably up-to-date. None of them, however, could be described as absolutely current. Even the most recent interest rates set out in the table (April 1991) relate to a period two months earlier than the month in which the table was published (June 1991). The interest rates for many countries are much less current.

(b) Other Periodical Publications

We also examined a number of other publications issued on a daily or weekly basis which contain information as to foreign

11. See Appendix B.

interest rates. The results of our survey are set out as Appendix C to this Report. It will be seen that none provide information to the same degree as the *International Financial Statistics*. These publications also vary in the extent to which they are "authoritative" (in the sense that some, like the Bank of Canada publications, are official, while others have no special status). Nonetheless, the general agreement among them concerning the interest rates which prevail with respect to the major currencies suggest a high degree of reliability.

All of the periodicals surveyed can fairly be described as "accessible." Most can be purchased at major newspaper and magazine outlets. All are to be found at the Vancouver Public Library and many are available at public libraries throughout the province.

The most striking feature of these publications is their timeliness. For some currencies, they provide up-to-the-minute information on foreign lending rates. The currency covered in the most timely and comprehensive manner is that of the United States.

4. Conclusion

We believe that the Table 60p lending rates published monthly in the *International Financial Statistics* by the International Monetary Fund should provide the primary basis for an interest regulation under the *Foreign Money Claims Act*. This view is subject to an important qualification. The reporting of interest rates with respect to the currencies of some countries is so badly out of date that it cannot be relied on and should be excluded from the scope of the regulation. Any "cut-off" is, to a degree, arbitrary but we believe any currency which has not been the subject of a published interest rate in Table 60p for a period of one year should be excluded. In other words, any country which cannot provide an average figure for interest in the second quarter of 1990 in Table 60p for June 1991 should be excluded from the scope of the regulation.[12]

It will also be necessary to bridge the gap between the latest available figure and the "current" interest figure which a litigant will need to properly calculate court order interest. For

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12. Even where the regulation does not stipulate a rate for a particular currency, it can still provide counsel and the courts with a valuable clue as to the kind of interest rate on which evidence should be led for the purposes of fixing a rate under s. 2(2) of the *Foreign Money Claims Act*.

example, a litigant entering a judgment in June 1991, whose cause of action arose some time in 1987, will be able to identify the appropriate interest rates for most of the period over which interest must be calculated, using the IMF statistics. That litigant will not, however, have an interest rate or rates to cover the period between the time the last rate was published and the time the judgment is entered. That period may be no more than a couple of months in the case of a judgment measured in United States dollars or it may be closer to a year for one measured in French currency.

One approach is to create a presumption that the last published interest rate remains in effect to the date of judgment. In some cases, however, better information will be available and it is here that the other periodicals which we surveyed have a role to play. Their main strength is providing up-to-the-minute information which is exactly what is needed during the period (immediately before judgment) that is not covered by the IMF statistics. Where such information is available, there is no reason why it should not be permitted to displace the presumption suggested.

We believe that both the IMF statistics and the foreign interest rates published in the periodicals surveyed should be characterized in evidentiary terms. They should constitute proof of relevant foreign interest rates, but they should also be capable of being displaced by evidence to the contrary if some inaccuracy in published figures can be established.[13] This should not occur often, but a foreign money interest regulation framed in this way would contain a useful safety valve.

A draft regulation which embodies our views concerning the proper approach to an interest regulation is set out at the end of this Report.

5. A Note On Post-Judgment Interest

The proposals set out above, and the draft regulation which follows, are aimed solely at prejudgment interest to be awarded under the *Court Order Interest Act*. In British Columbia, post-judgment interest is regulated by federal legislation, the *Interest*

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13. The suggested presumption should be similarly rebuttable. It might also be noted that a radical error in the published interest rates would likely trigger the application of section 2(2)(b) of the *Foreign Money Claims Act* which permits the courts to fix a rate of court order interest having regard to the evidence before it where it appears that reliance on the regulations would be unjust to any of the parties.

Act.[14] In the western provinces and the territories,[15] judgment debts bear interest at the rate of 5%.[16] This interest rate is an anomaly even for judgments in Canadian currency.

The federal *Interest Act* permits no distinction to be drawn between judgments measured in Canadian currency and those which may be measured in a foreign currency. Where a judgment goes unsatisfied for some period of time, the plaintiff's actual recovery will be significantly short of the amount justly owing. This inequity will be exacerbated in the case of a claim measured in a foreign currency which attracts a high rate of interest in its own jurisdiction.

The federal government has, on numerous occasions, indicated an intention to repeal the relevant provisions of the *Interest Act* and leave the regulation of post-judgment interest exclusively to provincial legislation. Almost ten years ago, British Columbia anticipated that event by enacting amendments to the *Court Order Interest Act* to provide for post-judgment interest. Those amendments are to come into force when the corresponding provisions of the federal *Interest Act* "cease to have effect in British Columbia."[17]

If and when the Parliament of Canada does withdraw from the field of post-judgment interest, it will be desirable to give further consideration to the content and approach of an interest regulation made under the *Foreign Money Claims Act*. The regulation must work in harmony with whatever legislative scheme replaces the federal *Interest Act*.[18]

D. Enforcement Process Regulations

Section 3 of the *Foreign Money Claims Act* also provides for regulations to harmonize a judgment made under section 1 of the Act with the creditors' remedies which might be invoked to enforce it. These creditors' remedies usually take the form of a writ of seizure and sale or a garnishing order. Those who must act on

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14. R.S.C. 1985, c. I-15.
15. For reasons which are part of our constitutional history, other Canadian jurisdictions are free to legislate to provide for post-judgment interest. In Ontario, *see, e.g., Courts of Justice Act, 1984*, S.O. 1984, c. 11, ss. 127-129; *am.* S.O. 1989, c. 67, ss. 5 & 6.
16. *Ibid.*, s. 12.
17. *Court Order Interest Amendment Act, 1982*, S.B.C. 1982, c. 47.
18. The regime which replaces the *Interest Act* will not necessarily be the 1982 amendments to the *Court Order Interest Act*. We have made recommendations in relation to post-judgment interest which take a somewhat different approach. *See* Law Reform Commission of British Columbia, *Report on the Court Order Interest Act* (LRC 90, 1987).

this process require some concrete figure in Canadian dollars so they know how much to seize or how much to pay into court.

A principle which has been adopted in other jurisdictions,[19] and which commends itself to us, is that the figure used, when enforcement is issued, is the value of the judgment in local currency on the date the process is issued.

It is important to note that valuing the judgment in Canadian funds for the purpose of issuing enforcement process is not intended to crystallize that amount for all purposes. The amount by which the judgment is actually discharged will still be determined with reference to conversion rates in effect at the time of payment.[20]

A more difficult question is the amount of detailed guidance a regulation should provide on this question.[21] Our preference is for a regulation that is framed in relatively simple terms. It should be sufficient to provide only a rigorous statement of the principle in the regulation. It is likely that an appropriate practice would soon evolve. If this should not occur, or other difficulties should arise, it might be desirable to reexamine the question of more detailed practice rules.

E. A Draft Regulation

Set out below is a draft regulation which embodies our conclusions and recommendations.

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19. *See* Practice Direction (U.K.) Queen's Bench Div., (1976) 1 W.L.R. 83.
20. Thus even if local currency equal to the full value of the judgment, as set out on the enforcement process, is recovered that is not necessarily the end of the matter. A change in exchange rates occurring between the time the process issued and the time of payment to the judgment creditor may require an adjustment – a further payment by, or a rebate to, the judgment debtor depending on the direction of the change.
21. The English Practice Direction which governs this question, *supra*, n. 19, is relatively detailed.

Foreign Money Claims Act

Foreign Money Claims Act Regulations

Definitions

1. In these regulations

"final prejudgment period" means the period from

(a) the time to which the most recently published interest rate pertaining to a foreign currency in the IMF Table relates, to

(b) the date judgment is given.

"foreign prime rate" means the interest rate in effect from time to time in a country other than Canada, applicable to the currency of that country, which is most closely analogous to the rate of interest charged by Canadian chartered banks on loans to their most creditworthy customers.

"IMF Table" means the Lending Rates Table 60p of the International Financial Statistics issued by the International Monetary Fund.

"periodical" means a publication which is issued weekly or more frequently, and which is, or can be made, available in the province.

Foreign Prime Rate to be Applied

2. Interest awarded under the *Court Order Interest Act* on a judgment to which section 1 of the *Foreign Money Claims Act* applies shall be at the foreign prime rate.

Ascertaining Foreign Prime Rate for Scheduled Countries

3. (1) An interest rate set out in the IMF Table for the currency of a country listed in the Schedule is presumed to be the foreign prime rate, and a statement in the IMF Table that an interest rate was in effect at a particular time is proof that the interest rate was in effect at that time.

(2) Publication in a periodical that a purported foreign prime rate was in effect at a particular time during the final prejudgment period is proof that the interest rate was in effect at that time.

(3) Where an interest rate is not proved under subsection (2), the interest rate in effect during the final prejudgment period shall be presumed to be the interest rate pertaining to the currency in issue most recently published in an IMF Table

(4) An interest rate proved under subsection (1) or (2) or presumed under subsection (3) may be rebutted by evidence to the contrary.

Enforcement Process

4. (1) Legal process for the enforcement of money judgments, to which the *Court Order Enforcement Act* applies, shall issue only for the money payable under the order as of the date the process issues, determined in accordance with section 1(1) of the *Foreign Money Claims Act*, and for the purposes of determining the amount for which legal process is issued the conversion date is the last day, before the day on which the process is issued, that the bank referred to in section 1(1) quotes a Canadian dollar equivalent to the other currency.

(2) Subsection (1) does not apply to the registration of a judgment at a Land Title Office under section 80 of the *Court Order Enforcement Act*.

SCHEDULE

Section 3 applies to the currencies of the following countries:

Australia
Belgium
Finland
France
Germany
Greece
Indonesia
Ireland
Italy
Japan
Korea
Sweden
Malaysia
Netherlands
Norway
Portugal
South Africa
Spain
Switzerland
United Kingdom
United States
Venezuela
New Zealand

APPENDIX A

FOREIGN MONEY CLAIMS ACT

S.B.C. 1990, c. 18

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Payment in foreign money equivalent

1. (1) Where, before making an order for the payment of money arising out of a claim or loss, the court considers that the person in whose favour the order will be made will be most truly and exactly compensated if all or part of the money payable under the order is measured in a currency other than the currency of Canada, the court shall order that the money payable under the order will be that amount of Canadian currency that is necessary to purchase the equivalent amount of the other currency at a chartered bank located in British Columbia at the close of business on the conversion date.

(2) The conversion date is the last day, before the day on which a payment under the order is made by the judgement debtor to the judgement creditor, that the bank referred to in subsection (1) quotes a Canadian Dollar equivalent to the other currency.

Interest

2. (1) Interest payable under the *Court Order Interest Act* shall be paid at a rate determined

(a) under the regulations made under section 3(a), or

(b) in the manner provided for in subsection (2).

(2) Where

(a) due to a change in circumstances, the court considers it is not possible to determine a rate of interest under the regulations,

(b) the court considers it would be unjust to any of the parties that the rate so determined be utilized, or

(c) no regulation has been made under section 3(a) with respect to the other currency,

the court may fix a rate that is payable, having regard to rates that are being paid on the other currency in a country where that currency circulates as legal tender.

Regulations

3. The Lieutenant Governor in Council may make regulations that are considered necessary or advisable respecting

(a) the manner of determining interest rates that are payable on particular currencies, for purposes of section 2(1), and

(b) fixing conversion dates in respect of all processes to obtain money under the *Court Order Enforcement Act* to satisfy an order for the payment of money that is made under section 1.

Consequential Amendment

Court Order Enforcement Act

4. *Section 33 of the Court Order Enforcement Act*, R.S.B.C. 1979, c. 75, is repealed and the following substituted:

Application of Foreign Money Claims Act

33. Where a judgment sought to be registered under this Act makes payable a sum of money expressed in a currency other than the currency of Canada,

(a) the *Foreign Money Claims Act* applies to ascertain the amount of Canadian currency payable under it,

(b) the registering court shall certify the amount payable under the judgment, in accordance with paragraph (a), on its registration, and

(c) upon its registration, the judgment shall be deemed to be a judgment for the amount so certified.

Commencement

5. This Act comes into force by regulation of the Lieutenant Governor in Council.

APPENDIX B

CANADA'S MAJOR TRADING PARTNERS

	Exports	Imports
United States	74.5%	64.6%
Japan	5.8%	7.0%
United Kingdom	2.4%	3.6%
Germany	1.6%	2.8%
Korea, South	1.1%	1.7%
France	.87%	1.8%
China, P. Rep.	1.2%	1.0%
Italy	.80%	1.4%
Taiwan	.56%	1.6%
Mexico	.42%	1.3%
Hong Kong	.47%	.78%
Netherlands	1.0%	.53%
Belgium	.86%	.38%

NOTE:

All data is taken from trading figures for 1990. Source used was *Statistics Canada*, "Summary of Canadian International Trade," December 1990.

APPENDIX C

CURRENT INFORMATION CONCERNING FOREIGN PRIME RATES

The Commission surveyed a number of publications containing up-to-date information on foreign prime rates. They are listed below along with their frequency of publication.

The Wall Street Journal – daily
The Globe and Mail – daily
The Financial Post – daily
Financial Times (Canada) – weekly
Financial Times (London) – daily
The Journal of Commerce – daily
Bank of Canada Weekly Financial Statistics – weekly
Far Eastern Economic Review – weekly
The Economist – weekly

All of these publications listed a U.S. prime rate.

Three of these publications also provided prime rates for other countries listed in the schedule to our draft regulation:

The Wall Street Journal
- Japan
- Germany
- Switzerland
- Britain

Far Eastern Economic Review
- Australia
- Britain
- Indonesia
- Japan
- Malaysia
- New Zealand
- Korea

The Economist
- Australia
- Belgium
- France
- Germany
- Netherlands
- Italy
- Japan
- Spain
- Sweden
- Switzerland
- Britain